1	EDMUND G. BROWN JR., Attorney General of the State of California	
2	STEVEN V. ADLER Supervising Deputy Attorney General	
3	DOUGLAS LEE, State Bar No. 222806 Deputy Attorney General	
4	California Department of Justice 110 West "A" Street, Suite 1100	
5	San Diego, CA 92101	
6 7	P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2580 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9	BEFORE THE	
10	RESPIRATORY CARE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11		
12	In the Matter of the Accusation Against:	Case No. R-2108
13	JAMES BERRY	ACCUSATION
14	P.O. Box 9256 Cedarpines Park, CA 92322	
15	Respiratory Care Practitioner License No. 3230	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Stephanie Nunez (Complainant) brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Respiratory Care Board of California,	
22	Department of Consumer Affairs.	
23	2. On or about May 31, 1985, the Respiratory Care Board issued Respiratory	
24	Care Practitioner License No. 3230 to JAMES BERRY (Respondent). The Respiratory Care	
25	Practitioner License was in full force and effect at all times relevant to the charges brought herein	
26	and will expire on October 31, 2008, unless renewed.	
27	///	
28	///	

JURISDICTION

- 3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."
- 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."
 - 6. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

٠٠ ,,

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

""

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

•••••

7. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

8. California Code of Regulations, title 16, section 1399.370, states:

"For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

" "

"(c) Conviction of a crime involving driving under the influence or reckless driving while under the influence.

""

COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

27 | ///

28 ///

10. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

11. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation."

CAUSE FOR DISCIPLINE

(Conviction of a Crime)

- 12. Respondent is subject to disciplinary action under Code sections 3750, subdivisions (d) and (g), and 3752, in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as follows:
 - A. On or about March 1, 2005, at approximately 4:55 p.m., Respondent was involved in a traffic collision in San Bernardino County.

 Respondent attempted to drive around stopped vehicles in his lane and collided with another vehicle. Police officers responded to the scene. Respondent told officers he had three beers. Respondent was unable to perform the Standard Field Sobriety Tests. Blood alcohol test taken that evening revealed Respondent had a Blood Alcohol Content of .172 and .142.
 - B. On or about November 6, 2006, in the case of *The People of the State of California v. James Berry*, case number TCF044968, before the Superior Court of California, County of San Bernardino, Respondent pled guilty, pursuant to a plea bargain, of violating Vehicle Code section 23103.5 [wet reckless]. As a result of the conviction, Respondent was placed on three years probation with terms and conditions.

28 ///

1 **DISCIPLINE CONSIDERATIONS** 2 13. To determine the degree of discipline, if any, to be imposed on 3 Respondent, Complainant alleges that on or about November 24, 2003, in a prior disciplinary 4 action entitled In the Matter of the Accusation Against James Berry before the Respiratory Care 5 Board of California, in Case Number R-1818, Respondent's license was publically reprimanded for violating Code section 3750, subdivision (d), in that Respondent was convicted of a crime -6 7 driving with .08% or higher blood alcohol level [Veh. Code § 23152, subdivision (b)] That 8 decision is now final and is incorporated by reference as if fully set forth. 9 10 **PRAYER** 11 WHEREFORE, Complainant requests that a hearing be held on the matters herein 12 alleged, and that following the hearing, the Respiratory Care Board issue a decision: 13 1. Revoking or suspending Respiratory Care Practitioner License No. 3230, 14 issued to James Berry; 15 2. Ordering James Berry to pay the Respiratory Care Board the costs of the 16 investigation and enforcement of this case, and if placed on probation, the costs of probation 17 monitoring; and, 18 3. Taking such other and further action as deemed necessary and proper. 19 20 DATED: September 27, 2007 21 22 Original signed by Liane Zimmerman for: STEPHANIE NUNEZ 23 **Executive Officer** Respiratory Care Board of California 24 Department of Consumer Affairs State of California 25 Complainant 26 27

28